



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Kruckenberg Service Company

**File:** B-232337

**Date:** October 18, 1988

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### **DIGEST**

Agency properly rejected as nonresponsive bid accompanied by bid guarantee in the form of an irrevocable letter of credit which expired prior to such time as was reasonably necessary to enable government to exercise its rights in the event bidder failed to comply with invitation for bids requirement to furnish performance and payment bonds.

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### **DECISION**

Kruckenberg Service Company protests the rejection of its low bid as nonresponsive for failing to provide an adequate bid guarantee as required by invitation for bids (IFB) No. N62477-88-B-1040, issued by the Officer in Charge of Construction, Quantico, Virginia (Navy) for the construction of a parking lot.

We deny the protest.

The IFB required that bidders submit a bid guarantee in the amount of 20 percent of the bid price or \$3,000,000, whichever was less. The IFB contained the clause specified in the Federal Acquisition Regulation, § 52.228-1 (FAC 84-1), requiring bidders to submit bid guarantees in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or certain bonds or notes of the United States. The clause requires bidders, unless otherwise specified in the bid, to allow 60 days for acceptance of the bid and to give bonds required by the IFB within 10 days after receipt of the forms by the bidder. The clause also cautions bidders that failure to furnish a bid guarantee in the proper form and amount, by the time set for bid opening, may be cause for rejection of a bid.

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Kruckenberg was the apparent low bidder at the July 12, 1988 bid opening. Kruckenberg submitted with its bid an irrevocable letter of credit from the Patriot Bank, Stafford, Virginia. The letter of credit was effective from July 12 through September 12, a total of 62 days. By letter dated August 15, the Navy notified Kruckenberg that its bid was nonresponsive for failure to provide an adequate bid guarantee. The Navy determined the bid guarantee was inadequate because it was not effective for the entire bid acceptance period plus such time as would have been reasonably necessary for the Navy to exercise its rights in the event Kruckenberg failed to comply with the requirement to furnish performance and payment bonds.

Kruckenberg protests that its bid was responsive because its bid guarantee was effective for the 60-day bid acceptance period, and cites for support our decision Bailey Enterprises, B-225021, March 9, 1987, 66 Comp. Gen. \_\_\_, 87-1 CPD ¶ 265. According to Kruckenberg, the Navy is trying to impose a requirement on bidders which is unstated in the solicitation and which has not been recognized previously by our Office.

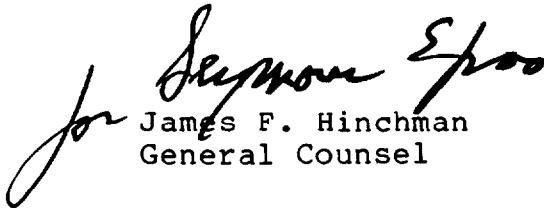
A bid guarantee, including a properly drawn irrevocable letter of credit, is a firm commitment to assure the government that a successful bidder will execute contractual documents and provide payment and performance bonds required under the contract. Its purpose is to secure the surety's liability to the government for excess procurement costs in the event the bidder fails to honor its bid in these regards. The key question in determining the sufficiency of a bid guarantee is whether the government will be able to enforce it. See Freitas - Lancaster, Inc., B-230569.2, June 7, 1988, 88-1 CPD ¶ 539.

We agree with the Navy that Kruckenberg did not provide an adequate bid guarantee. Since a bid guarantee is used to protect the government in the event the awardee does not furnish the required performance and payment bonds, we have previously recognized that a bid guarantee in the form of an irrevocable letter of credit must remain available to the government for the entire bid acceptance period plus such time as is reasonably necessary for the government to exercise its rights if the bidder fails to furnish the required bonds. A.W. Erwin and Son Contractors, B-190170, Dec. 21, 1977, 77-2 CPD ¶ 491. Here, where the IFB specified a 60-day bid acceptance period and required the awardee to furnish performance and payment bonds within 10 days after receipt of award, a bid guarantee limited to 62

days clearly expires short of the timeframe needed for the government to exercise its rights if the bidder fails to furnish the required bonds. Therefore, the accompanying bid was properly rejected as nonresponsive.

Kruckenberg's reliance on Bailey Enterprises, B-225021, supra, to support its contention that the bid guarantee only had to be effective for the bid acceptance period is clearly misplaced. In Bailey, we held that where a letter of credit lacks an expiration date, a reasonable time for demanding payment under the letter will be implied. We stated that it was reasonable to assume that Bailey's letter of credit would remain outstanding through the total period allowed under the IFB for the agency to accept the bid "and for the bidder to furnish performance and payment bonds." Thus our decision in Bailey impliedly recognizes the necessity for a letter of credit used as a bid guarantee to remain effective not only for the bid acceptance period but also for such time as is reasonably necessary for the government to exercise its rights if the bidder fails to furnish the required bonds.

The protest is denied.

for  
James F. Hinchman  
General Counsel